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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,206	10/30/2003	Joseph A. DePuydt	B06320-B	2209

7590 11/14/2005
Charles P. Boukus, Jr
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EXAMINER

GRAHAM, GARY K

ART UNIT PAPER NUMBER

1744

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,206

Applicant(s)

DEPUYDT ET AL.

Examiner

Gary K. Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005 and 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4,6 and 7 is/are allowed.
- 6) ☒ Claim(s) 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Antecedent basis should be provided for the surfaces of the first and second bristle supports being capable of lying in substantially the same plane during operation of the electric toothbrush.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese patent 10-66704.

The Japanese patent discloses the invention, a powered toothbrush, as is claimed (figs. 15-18). The Japanese patent discloses a handle (3) with a neck (10) extending therefrom and supporting a head at a distal end thereof. The head has an exposed outer surface from which bristles (2) extend. A first tuft block (13) is rotatably mounted to a fixed section (11) of the head for oscillating rotating movement (see arrow in fig.16). A first drive structure (18,21) is connected to the first tuft block for

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moving the first tuft block in a plane generally parallel to the exposed outer surface. A second tuft block (12) is mounted within the fixed section of the head and is aligned and received in an opening in the exposed outer surface. The second tuft block (12) has bristles (2) extending outwardly from the exposed outer surface. The second tuft block is mounted for moving in an in and out direction generally perpendicular (see arrow in fig.17) to the exposed outer surface within said opening. A second drive structure (16) drives the second tuft block in the in and out direction.

Interference

Claims 8-12 of this application has been copied by the applicant from U. S. Patent No. 6,889,401. These claims are not patentable to the applicant because of the above set forth 102 rejection.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claim be patentable to the applicant subject to a judgment in the interference. The claims are clearly met by the Japanese patent.

Response to Arguments

Applicant's arguments with respect to the objection to the specification are noted. While applicant points to the figures as providing support for the claimed subject matter, it is the lack of antecedent basis for the claimed terminology that is the basis of the objection. Antecedent basis should be provided for the surfaces of the first and second bristle supports being capable of lying in

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substantially the same plane during operation of the electric toothbrush. The description of the figures 4-7 embodiment, pointed out by applicant, does not discuss the surfaces as claimed.

Applicant's arguments, filed 25 July 2005, with respect to the rejection of claims 1, 2, 4, 6 and 7 have been fully considered and are persuasive. The rejection of these claims has been withdrawn.

Allowable Subject Matter

Claims 1, 2, 4, 6 and 7 allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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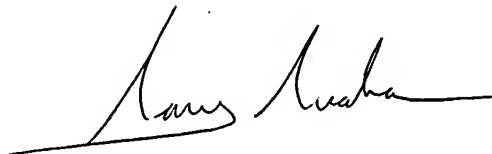
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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